IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO: 20746 of 2004

Between:

S. Ravi Kanth, S/o. Late S. Koteshwar Swamy,
R/o. Flat No. 102, 2nd Floor, Northern side, Murthy Mansion, Kalyan Nagar,Yousufguda, Hyderabad.

.... PETITIONER

AND

1 The Central Registrar/Arbitrator, The A.P. Mahesh

Co-operative Urban Bank Ltd. Room No. 201,

Sherza Estates,

N.S.Road, Hyderabad.
2 The A.P. Mahesh Co-operative Urban Bank Ltd. Rep by

General Manager, Office at 5-3-989, 3rd Floor, Sherza

Estates, N.S. Road, Hyderabad.
3 M/s. Shilpa Homes, 6-3-249/3/C, Road No. 1,
Banjara Hills, Hyderabad. Represented by its Managing

Partner,Sri P.V.S.N. Murthy
4 Sri C. Muralimohan Sastry, S/o. Sri C. Venkata

Suryanarayana Murthy, R/o. 1-2-212/6F, Domalguda,

Hyderabad.
5 Sri C. Tarakam, S/o. C. Venkata Suryanarayana Murthy,
R/o. H.No. 8-3-167/D19, Kalyan Nagar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of WRIT OF CERTIORARI to call for the records relating to the R.C. No. 28/05-03 on the file of the learned Central Registrar/Arbitrator, A.P. Mahesh Co-operative Urban Bank Ltd. i.e., the 1st Respondent and quash the same is without jurisdiction, illegal, arbitrary and contrary to law and consequently set aside the same and pass such order or orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.V.SIMHADRI

Counsel for the Respondent No.2: MR. RAVI KONDAVEETI

Counsel for Respondent Nos.3 to 5: ---

The Court made the following:

ORDER:

The second respondent advanced a huge amount to the third respondent. The advance was duly secured by mortgage of the property on which the residential flats were built. The second respondent-Bank being a Co-operative Society governed by the Multi State Cooperative Societies Act, 2002 (for short 'the Act') initiated arbitration proceedings under Section 84(1) of the said Act for recovery of a sum of Rs.54,26,694/-. The learned Arbitrator-the first respondent herein, passed an award on 17.11.2003 directing the borrowers to pay the outstanding amount, duly granting two months time for redemption. Liberty was given to the second respondent-Bank to sell the movable and immovable properties if the amount is not paid within the redemption time. Subsequently, the second respondent-Bank filed an application for modification of the award, namely, to include another flat on the second floor in the northern side of the property, which is already mortgaged to the Bank. The said application was allowed by orders dated 13.09.2004, which is assailed in the writ petition. Though the interlocutory matters are listed, the main writ petition is being disposed of by this order.

There is a dispute between the contestants as to whether the petitioner herein purchased the flat on the northern side of the second floor of the apartment block known as "Murthy Mansion", after the same was released for mortgage by the second respondent-Bank at the behest of the builder. Further it is brought to the notice of this Court that after obtaining the necessary modification from the first respondent, the second respondent-Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act'). Challenging the same, the petitioner moved an appeal/application before the Debts Recovery Tribunal, Hyderabad, and obtained interim orders of stay of dispossession. As the second respondent-Bank claims right over the flat purchased by the petitioner by reason of the impugned order dated 13.09.2004, and as the petitioner also already impugned the said notice before the appropriate forum, this Court is of the considered opinion that the petitioner cannot be permitted to pursue two remedies simultaneously in relation to the same cause of action. As there are questions of fact involved in the matter, it would be in the interest of the petitioner himself to pursue the remedy under the Securitisation Act and seek redressal. Till the said matter is finally settled, in view of the orders passed by the Debts Recovery Tribunal, the second respondent-Bank has to seek appropriate orders from the Debts Recovery Tribunal before taking further action pursuant to the impugned award.

The writ petition, with the above observations, is accordingly dismissed. No costs.

_____

(V.V.S.RAO, J)

14.06.2005

vs

To

1 The Central Registrar/Arbitrator, The A.P. Mahesh Co-operative Urban Bank Ltd. Room No. 201, Sherza Estates, N.S.Road, Hyderabad.

2 The General Manager, A.P. Mahesh Co-operative Urban Bank Ltd. Office at 5-3-989, 3rd Floor, Sherza Estates, N.S. Road, Hyderabad.

3 2 CD copies.